

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC, and
Bernard L. Madoff,

Plaintiff,

v.

ABN AMRO BANK, N.V. (presently known as THE
ROYAL BANK OF SCOTLAND, N.V.),

Defendant.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC, and
Bernard L. Madoff,

Plaintiff,

v.

ABN AMRO BANK, N.V. (presently known as THE
ROYAL BANK OF SCOTLAND, N.V.),

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-05354 (CGM)

Adv. Pro. No. 11-02760 (CGM)

STIPULATION AND ORDER

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the estate of Bernard L. Madoff, individually, and defendant ABN AMRO Bank N.V. (presently known as The Royal Bank of Scotland N.V.)¹ (“Defendant” and collectively, with the Trustee, the “Parties”), by and through their respective, undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on December 8, 2010, the Trustee filed his original complaint in the above-captioned adversary proceeding (the “RBS Bankruptcy Docket”) against Defendant to recover alleged subsequent transfers Defendant allegedly received from Rye Select Broad Market XL Portfolio, Ltd; Rye Select Broad Market Portfolio Limited; Rye Select Broad Market XL Fund L.P. and Rye Select Broad Market Fund L.P. RBS Bankruptcy Docket, ECF. No. 1.

WHEREAS, on August 8, 2012, the Trustee filed his amended complaint against Defendant. RBS Bankruptcy Docket, ECF. No. 47.

WHEREAS, on June 10, 2019, the Trustee moved to file a proposed second amended complaint. RBS Bankruptcy Docket, ECF No. 179.

WHEREAS, on March 31, 2020, the Bankruptcy Court, J. Bernstein, issued a decision, denying the Trustee’s motion to file a proposed second amended complaint (the “Final Judgment”), resulting in the dismissal of all of the Trustee’s claims against Defendant. RBS Bankruptcy Docket, ECF No. 200.

¹ On May 30, 2018, The Royal Bank of Scotland N.V. changed its name to “NatWest Markets N.V.”

WHEREAS, on May 12, 2020, the Trustee commenced an appeal of the Final Judgment by filing a notice of appeal (the “Appeal”) from the Bankruptcy Court with the District Court. 20-cv-3684 (VEC) (the “RBS District Court Appeal”), ECF No. 1.

WHEREAS, on May 28, 2020, the Trustee moved the District Court for a stay of the Appeal pending the decision by the Second Circuit in two similarly situated actions: *Picard v. Citibank, N.A.*, No. 20-1333 (2d Cir.) (“Citibank Second Circuit Appeal”) and *Picard v. Legacy Capital Ltd.*, No. 20-1334 (2d Cir.) (together with the Citibank Second Circuit Appeal, the “Good Faith Appeals”).

WHEREAS, on June 8, 2020, the District Court granted the Trustee’s Motion to Stay Appeal and stayed the Appeal (the “Stay”), with an exception for Defendant’s contemplated motion to certify the Appeal for direct appeal to the Second Circuit. RBS District Court Appeal, ECF No. 12.

WHEREAS, on July 21, 2020, Defendant filed a petition for direct appeal under 28 U.S.C. § 158(d)(2) with the Second Circuit Court of Appeals and requested to expedite the appeal and that it be heard in tandem with the Good Faith Appeals. No. 20-2291 (2d Cir.) (the “RBS Second Circuit Appeal”), ECF Nos. 1-2.

WHEREAS, on October 6, 2020, the Second Circuit Court of Appeals issued an order deferring its decision on Defendant’s petition for a direct appeal pending resolution of the Good Faith Appeals. *Id.* at ECF No. 48.

WHEREAS, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals. *See In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the “Good Faith Decision”).

WHEREAS, on October 26, 2021, the Parties filed a Stipulation in the Second Circuit to withdraw the RBS Second Circuit Appeal with prejudice pursuant to Federal Rule of Appellate Procedure 42(b). RBS Second Circuit Appeal, ECF No. 51.

WHEREAS, on October 27, 2021, the Second Circuit “so-ordered” the Stipulation and issued the mandate. *Id.* at ECF Nos. 57-58.

WHEREAS, on November 12, 2021, the Parties filed a letter in the District Court to so-order a Stipulation to vacate the Bankruptcy Court’s Final Judgment and remand the case to the Bankruptcy Court for further proceedings. RBS District Court Appeal, ECF No. 25.

WHEREAS, on November 12, 2021, the District Court, J. Caproni, “so-ordered” the Stipulation, vacated the Bankruptcy Court’s Final Judgment and remanded the case to the Bankruptcy Court for further proceedings. RBS District Court Appeal, ECF No. 26.

WHEREAS, on November 16, 2021, the case was formally reopened in the Bankruptcy Court. RBS Bankruptcy Docket, ECF No. 214.

WHEREAS, on October 6, 2011, the Trustee filed a complaint against Defendant in the adversary proceeding *Picard v. ABN AMRO Bank N.V. (presently known as The Royal Bank of Scotland, N.V.) et al*, Adv. Pro. 11-02760 (CGM) (the “Harley Bankruptcy Docket”), to recover alleged subsequent transfers Defendant allegedly received from Harley International (Cayman) Limited. Harley Bankruptcy Docket., ECF No. 1.

WHEREAS, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision, *see SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014).

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers on grounds of international comity resulting in the dismissal of all claims against Defendant in the Harley Complaint. Harley Bankruptcy Docket, ECF No. 74; *see Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016).

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) which, *inter alia*, vacated the Bankruptcy Court ET Decision.

WHEREAS, the Trustee intends to move for leave to consolidate the RBS and Harley actions and to amend the complaints in those actions; and the Parties have met and conferred on this intended motion and proposed timing and briefing schedule.

IT IS HEREBY STIPULATED AND AGREED, that the Trustee shall file a motion for leave to consolidate and amend the complaint on March 8, 2022. Defendant shall respond to the motion by May 9, 2022, and the Trustee shall file his reply by June 9, 2022.

IT IS HEREBY STIPULATED AND AGREED, that the Trustee and Defendant reserve all rights, arguments, objections and defenses they may have, and entry into this Stipulation shall not impair or otherwise affect any such rights, arguments, objections, and defenses, including without limitation, challenges to personal jurisdiction or to the jurisdiction of this Court.

IT IS HEREBY STIPULATED AND AGREED, that the above deadlines granted by this Stipulation are without prejudice to either party seeking future extensions of time.

Dated: January 14, 2022
New York, New York

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Trustee for the Liquidation of Bernard L.
Madoff Investment Securities LLC and the
estate of Bernard L. Madoff*

SO ORDERED.

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Scotland, N.V.)*

**Dated: January 19, 2022
Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge**